IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6209 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.H.WAGHELA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MANUBHAI BALAMBHAI PARMAR
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MS SUBHADRA G PATEL for Petitioner.
MS MD MEHTA, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE D.H.WAGHELA

Date : 02/08/2007

ORAL JUDGMENT

1. The petitioner has invoked Article 226 of the Constitution, in effect, to challenge order dated 16-12-2006 of his detention issued by Police Commissioner, Vadodara, in exercise of powers conferred under sub-section (2) of Section 3 of the Gujarat Prevention of Anti Social

Activities Act, 1985 (for short “PASA”). It is stated in the grounds of detention supplied to the petitioner under Section 9 of PASA that the petitioner was indulging in anti-social activity of selling liquor. That is stated on the basis of registration on 1-12-2006 of an offence vide III-CR No.242/2006 punishable under Section 66 B, 65 A E and 116 of the Prohibition Act. It is, on that basis, also stated that the petitioner was bringing into Vadodara City English liquor and transporting, storing and also selling it, due to which danger was caused to life of citizens and loss of life on large scale was possible in future. Being subjectively satisfied on that basis about necessity of preventing the petitioner from acting in any manner prejudicial to maintenance of public order, the impugned order is stated to have been made and the petitioner is stated to have been taken into custody on 16-12-2006. According to the copy of FIR, on the basis of which the petitioner is stated to have been indulging in anti-social activity of bootlegging, three persons had come in some vehicle with two loose sacks at a spot where the petitioner had come on a motor cycle and approached those three persons for taking delivery when all the four were caught and 237 bottles of liquor valued at Rs.7,110/- were recovered from them. The labels on the bottles of liquor clearly depicted the statutory warning that 'consumption of liquor is injurious to health'. Thus, the petitioner was arrested on 1-12-2006, stock of liquor and the motor cycle driven by the petitioner were taken as muddamal articles and then the petitioner is stated to have been released on bail.

2. According to affidavit-in-reply of Mr.P.C.Thakur, Commissioner of Police, Vadodara city, who is the detaining authority and who has signed the impugned order, he had passed the order of detention on 16-12-2006 under the provisions of Section 2 (b) of PASA. Para 6 of his affidavit-in-reply states:

> ".....I say and submit that an offence has been registered against the petitioner under the provisions of Bombay Prohibition Act. I say and submit that the petitioner is illegally storing and selling the liquor. I say and submit that the liquor is injurious to health and likely to create health hazard in general public and thus, public order has been disturbed. I say and submit that the statements of secret witnesses, whose names and addresses are not disclosed, have not been recorded. I say and submit that the petitioner is not disturbing the Law & Order, but disturbing the Public Order. Therefore, after subjectively satisfying myself, I passed the order of detention, which is just, legal and proper."

It is further stated in para 7 :

> ".....I say and submit that the impugned order of detention is dated 16/12/2006 bearing No.PCB/PASA/DTN/192/2006, and therefore, the petitioner has been detained on the same day i.e. on 16/12/2006, thereafter, the report with regard to the order of detention, committal order, grounds of detention was sent to the State Government on 18/12/2006 under Section 3 (3) of the PASA as there was holiday on 17/12/2006. Therefore, the order of detention is legal, just and proper in eye of law."

In para 8 of the affidavit, it is stated, inter alia, as under:

> ".....I say and submit that the petitioner is doing his bootlegging activities in a sequence. I say and submit that the petitioner is illegally storing and selling country made liquor. I say and submit that the liquor is injurious to health and likely to create health hazard in general public so as to disturb the public order, and therefore, the petitioner has been detained under the provisions of Section 2 (b) of PASA as "bootlegger", therefore, order of detention is legal, just and proper in the eye of law."

3. It must be noted in above context of narration of facts that the impugned order dated 16-12-2006, according to the original order with original signature of the detenue, as produced in the Court, clearly shows that the petitioner was detained on 17-1-2007 and, hence, statement in that regard in the above affidavit is incorrect. Section 2 (b)

of PASA only defines the term “bootlegger”, whereas the impugned order is stated, on oath, to have been made under the provisions of Section 2 (b) which clearly shows total non-application of mind of the detaining authority. It is further stated in the affidavit that the petitioner was doing his bootlegging activities in sequence, which is not substantiated on the basis of any cogent, credible and independent material. While the present petition was filed in this Court in March 2007 and, admitting the petition, Rule was issued and made returnable on 12-4-2007, the affidavit-in-reply was not filed in the Court till July 2007 even though it was affirmed and ready on 16th April 2007.

4. Learned counsel, Ms.Patel submitted that material on record did not even fully justify branding of the petitioner as a “bootlegger” and solitary incident of involvement in an offence under the Prohibition Act could not justify inference or assumption that activities of the petitioner could adversely affect public order. She relied upon judgment of this Court (Coram: J.N.Bhatt, Acting C.J.) in **Sohanlal Surajaram Visnoi v. State of Gujarat & Others [2004 (2) GLR 1051]** for the observation, as under, made therein:

> “7. .....Emphasis is laid on “public order” and not “law and order” which belongs to the realm of general law. After having taken into account the statutory definitions of the persons branded as "bootlegger" or "dangerous person" under the PASA Act, and detailed factual matrix of each case, the solitary incident or instance in question in these petitions has not been shown or spelt out from the record as affecting the "public order" or likely to create public disturbance or prejudicial or adverse to the maintenance of "public order", and therefore, the continued detention of the detenus in each case has not been shown to be justifiable, and in this context, in exercise of the powers under Article 226 of the Constitution of India, this Court is left with no alternative in this group of petitions, but to quash and set aside the orders in each matter, with the result

that all the petitions are required to be allowed while quashing and setting aside the detention orders passed against detenus in this group....."

5. Learned AGP, Ms.M.D.Mehta, appearing for the respondents relied upon judgment of this Court (Coram : J.N.Bhatt, Acting C.J.) in **Jiwanbhai Bhailalbhai Patanwadia v. Commissioner of Police, Vadodara City & Others [2004 (4) GLR 3240]** in which following observations are made:

"9. ..... From the chain of events as above, the submission, therefore, that dealing with illicit liquor or commission of offences under the Prohibition Act at the best would amount to breach of law and order and not public order is not tenable. It may be noted that there cannot be a straight-jacket formula. There cannot be any universal yardstick. The authority concerned is obliged to take into consideration all the aspects, facts and incidental circumstances so as to reach to a subjective satisfaction for the purpose of passing the order of detention against the detenu with a view to prevent him from carrying on further prejudicial activities and breaking public order. It is, therefore, very clear that this is not a punitive order but a preventive order. Whether such activities in a given case would affect the law and order only and not the public order or vice versa can be examined and adjudicated in the light of facts and circumstances of such case....."

6. It is held by this Court (Coram : Ms.Justice R.M.Doshit) in **Amarbhai Kanjibhai Nayak v. Commissioner of Police Ahmedabad City & Others, [1999 (3) GLR 2703]**:

"10. ..... It is true that the solitary incident of violation of prohibition law would not be a problem to the maintenance of public order and for such solitary incident, no person can be detained under the Act. As held in the matters of Mustak Miya Shaikh (Supra) and Piyush Kantilal Mehta (Supra) and the other judgments relied upon by the learned advocate, it is evident that the Detaining Authority is bound to satisfy itself that

> in addition to bootlegging activities, such activities also adversely or are likely to adversely affect the public order within the meaning of sub-section (4) of Section 3 of the Act. The offence registered against the petitioner reveals that the petitioner was carrying liquor in large quantity in violation of the prohibition law. In addition to the said offence registered against the petitioner, the incident narrated by the two witnesses also disclose that the petitioner was carrying liquor in large quantity and that his activities at the moment had caused breach of public order. The petitioner had not only beaten the witness in public place, he had also administered threats to the public gathered at the spot of incident, creating fear in the minds of the members of public, causing breach of public tranquillity and even tempo of life."

7. In view of the above legal dicta and the main ground of detention, in the facts of the present case, it is clear that the petitioner has not been detained on the ground of any disturbance of law and order but on the ground of exposure of general public to danger to their health on account of alleged bootlegging activity of the petitioner. Thus, the order of preventive detention is sought to be substantiated on the basis of alleged activities of the detenue, which caused or which were likely to cause danger to life or public health, which has to be deemed to be likely to adversely affect public order, which, in turn, would justify satisfaction of the detaining authority. That contention, however, sounds hollow in view of non-application of mind to the facts of the case in which the petitioner is not alleged to have carried, transported or imported the liquor but he is alleged to have gone at a spot on his motor cycle for the alleged purpose of collecting the stock. Apart from that, there is no material whatsoever to suggest or substantiate that the alleged activity of the petitioner caused grave or widespread danger to public health. The fact of solitary incident of alleged offence under the Prohibition Act and the quantity of liquor involved in the offence could, by no stretch, be presumed to be causing grave or widespread danger to public health so as to amount to a threat to public order. Therefore, assumption of

danger to public health clearly appears to be unsupported by any material and could not legally be deemed to be likely to adversely affect public order. Learned AGP, at one stage, sought to argue that the motor cycle which was also taken possession of along with illicit liquor was stolen by him but that contention could not be supported by any material on record.

8. Therefore, in the above facts, the impugned order is held to have been made without proper application of mind and it is found to be unsustainable in law. Accordingly, the petition is allowed and the impugned order dated 16-12-2006 of Police Commissioner, Vadodara is set aside with the direction that the petitioner shall be set at liberty forthwith unless he is required to be detained in custody for any other purpose. Rule is made absolute with no order as to costs. Direct service is permitted.

(D.H.Waghela, J.)

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